

Short Title: Partition of Property/Attorneys' Fees

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IN PARTITION PROCEEDINGS, THE COURT SHALL  
ALLOCATE PRO RATA AMONG ALL THE PARTIES THOSE REASONABLE  
ATTORNEYS' FEES INCURRED FOR THE COMMON BENEFIT OF ALL THE  
PARTIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 1 of Chapter 46 of the General Statutes is amended by adding  
a new section to read:

**"§ 46-3.3. Attorneys' fees.**

(a) In partition proceedings initiated under this Chapter, the court shall allocate pro rata  
among all the parties those reasonable attorneys' fees incurred for the common benefit of all the  
parties, unless a party shows by clear and convincing evidence that doing so would be  
inequitable.

(b) A party's reasonable attorneys' fees incurred in disputing which method of partition  
the court should order shall be allocated among parties aligned with the party on that issue but  
shall not be allocated among parties who oppose the party on that issue."

*[Staff Note: Item (6) of the Partition Task Force report is as follows: "Statutory presumption  
that attorneys' fees incurred for the common benefit of the heirs should be awarded, with the  
amounts in the discretion of the clerk. Attorneys' fees incurred specifically to oppose other  
tenants in common with respect to whether there should be partition in kind or by sale should  
not be awarded against the party opposing, but only chargeable to the clients of the attorney and  
those tenants in common aligned in interest with those clients. (Second sentence has pros and  
cons.)"]*

**SECTION 2.** G.S. 6-21 reads as rewritten:

**"§ 6-21. Costs allowed either party or apportioned in discretion of court.**

Costs in the following matters shall be taxed against either party, or apportioned among the  
parties, in the discretion of the court:

- (1) Application for years' support, for surviving spouse or children.
- (2) Caveats to wills and any action or proceeding ~~which~~that may require the construction of any will or trust agreement, or fix the rights and duties of parties ~~thereunder; provided, that in~~under any will or trust agreement. In any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit.
- (3) Habeas ~~corpus; and the~~corpus. The court shall direct ~~what~~which officer shall tax the costs ~~thereof of the proceeding.~~
- (4) In actions for divorce or ~~alimony; and the~~alimony. The court may both before and after judgment make such order respecting the payment of such costs as may be incurred by either spouse from the sole and separate estate of either spouse, as may be just.
- (5) Application for the establishment, ~~alteration~~alteration, or discontinuance of a public road, ~~cartway~~cartway, or ferry. The board of county commissioners ~~may order the costs incurred before them paid in their discretion in its~~discretion may assess the costs incurred before the board.
- (6) The compensation of referees and commissioners to take depositions.
- (7) ~~All~~Subject to G.S. 46-3.3, all costs and expenses incurred in special proceedings for the ~~division or sale of either real estate or personal property under the Chapter entitled Partition~~partition of real or personal property under Chapter 46 of the General Statutes.
- (8) In all proceedings under ~~the Chapter entitled Drainage, Chapter 156 of the~~General Statutes relating to drainage, except as therein~~otherwise provided.~~provided in that Chapter.

(9) In proceedings for reallocation of homestead for increase in value, as provided in the Chapter, Civil Procedure.

(10) In proceedings under Article 3 of Chapter 49 of the General Statutes regarding children born out of wedlock.

(11) In custody proceedings under Chapter 50A of the General Statutes.

(12) In actions brought for misappropriation of a trade secret under Article 24 of Chapter 66 of the General Statutes.

The word "costs" as ~~the same appears and is used in this section shall be construed to include~~ includes reasonable attorneys' fees in such amounts as the court shall in its discretion determine and ~~allow; provided that attorneys' allow. Attorneys' fees in actions for alimony alimony,~~ however, shall not be included in the costs as provided ~~herein, in this section~~ but shall be determined and provided for in accordance with G.S. 50-16.4."

*[Staff Note: Regarding G.S. 6-21(9), Session Laws 1981, c. 490, as amended by Session Laws 1981, c. 1001, repealed the homestead provisions in Chapter 1 of the General Statutes, including G.S. 1-373, which governed the procedure to reallocate a homestead due to an increase in value. The session law replaced the homestead laws with the exemption laws in Article 16 of Chapter 1C of the General Statutes but did not include a comparable successor provision to G.S. 1-373. Although G.S. 1C-1603(g) provides that an exemption may be modified due to a substantial change in value, this modification is by motion in the original exemption proceeding. Staff is planning on consulting with one or more attorneys knowledgeable in this area to determine if G.S. 6-21(9) should be repealed.]*

**SECTION 3.** G.S. 46-2.1 reads as rewritten:

**"§ 46-2.1. ~~Summons.~~ Summons; notice included in petition.**

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be included in the petition in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to ~~G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys' fees to be paid as a part of the costs of the proceeding.~~ G.S. 46-3.3, the court shall allocate pro rata among all the parties those reasonable attorneys' fees incurred for the common benefit of all the parties."

**SECTION 4.** G.S. 46-27 reads as rewritten:

**"§ 46-27. Sale of land-real property required for public use on cotenant's petition.**

When the ~~lands-real property~~ of ~~joint tenants or tenants in common or joint tenants~~ are is required for public purposes, one or more ~~of such tenants, or their guardian for them, cotenants, or the cotenant's guardian,~~ may file a petition verified by ~~oath, oath~~ in the superior court of the county where the ~~lands or any part of them lie, property or any part of the property is located,~~ setting forth ~~therein in the petition~~ that the ~~lands are~~ property is required for public purposes, and that ~~their the cotenants'~~ interests would be promoted by a sale ~~thereof. of the property.~~ Whereupon the court, all proper parties being before it, and the facts alleged in the petition being ascertained to be true, shall order a sale of ~~such lands, the property,~~ or so much ~~thereof of the property~~ as may be necessary. ~~The Subject to G.S. 46-3.3,~~ expenses, ~~fees fees,~~ and costs of this proceeding shall be ~~paid-assessed~~ in the discretion of the court. Mediator fees and costs of mediation shall be assessed in accordance with G.S. 7A-38.3B."

**SECTION 5.** This act becomes effective [October 1, 2019], and applies to partition proceedings commenced on or after that date.